

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 03-04-2019**Judgment delivered on 02-05-2019****First Appeal No. 190 of 2006**

- Naveen Jain s/o. Santosh Jain aged 28 years, r/o. Shop No. 543, B Market, Sector 6, Bhilai, District Durg (CG).

---- Appellant/Defendant.**Versus**

- Hitesh Bhai Patel s/o. Late Goverdhan Bhai Patel, r/o. E-9, Malviya Nagar, Durg (CG).

---- Respondent/plaintiff

For Appellant	: Mr. Arjun Yadav, Advocate.
For respondent	: Mr. Manoj Paranjpe, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against judgment and decree dated 21-8-2006 passed by 8th Additional District Judge, Durg (FTC in Civil Suit No.10-B/2004 wherein the said Court decreed the suit filed by the respondent/defendant for recovery of amount to the tune of Rs. 1,00,000/- with interest @ 6% per annum.

2. As per version of respondent/plaintiff, appellant/.defendant took loan of Rs.1,00,000/- on 30-5-1999 for his business and executed four promissory notes of Rs.25,000/- each in favour of respondent/plaintiff. It is also alleged that the appellant agreed orally to pay 2% interest per month thereon. Appellant did not pay the principal amount and interest that is why suit was filed and after

hearing the parties, the trial Court has decreed the suit as mentioned above.

3. Learned counsel for the appellant submits as under:

- I) The document produced by the respondent is not promissory note but a bond and bond must be properly stamped as per Section 35 of the Stamp Act, 1899 otherwise, it is inadmissible in evidence.
- ii) No amount was paid to the appellant, therefore, said promissory note is a false document.
- lii) When the amount is not received by the appellant, he is not under obligation to repay the same, therefore, finding arrived at by the trial court is not sustainable.

He placed reliance in the matters of **Mst. Indrani Bai vs. Shriram, reported in 1968 MPLJ 51, Praveen Nahar vs. Krishan Gopal Sanghi, reported in LAWS(MPH) 2005 10 38, Shyamrao vs Champalal, reported in AIR 2007 13, Mannalal Nanhelal vs. Sitambernath Ramhirdelal, reported in LAW (MPH) 1960 10-31.**

4. On the other hand, learned counsel for the respondents would submit that the finding arrived at by the trial Court is based

on proper marshalling of evidence and same is not liable to be interfered while invoking jurisdiction of the appeal. He placed reliance in the matters of **Ram Kishan Dwivedi vs. Rohni Prasad Tiwari and others**, reported in 2009 LAW Suit (MP) 287 , **Bhismat Pandey vs. Phoola**, reported in 2009 LAW Suit (MP) 108 and **Mallavarapu Kasivisweswara Rao vs. Thadikonda Ramulu Firm**, reported in 2009 Law Suit (SC) 952.

5. I have heard learned counsel for the parties and perused the record of the court below in which judgment/decree has been passed.

6. The first question for consideration of this court is whether the documents Ex.P/1 to P/4 are promissory notes or bonds.

7. To appreciate the rival contention of the parties, it would be appropriate if the definition of bond in the Indian Stamp Act, 1899 may be referred which reads thus:

Bond:

Section 2(5) 'Bond' includes:

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.

Promissory note has been defined in Section 2(22) which reads thus:

Promissory Note:

Section 2(22) 'Promissory note' means a promissory note as defined by the Negotiable Instruments Act, 1881;

It also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen.

As per Section 2(22) the definition of Promissory note shall be as defined by Negotiable Instruments Act, 1881. For ready reference the definition of promissory note as defined in Section 4 of the Negotiable Instruments Act may be referred, which reads as under:

4. 'Promissory note'.- A 'promissory note' is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Now in the light of aforesaid definitions firstly the definition of promissory note may be looked into. Section 4 of the Negotiable Instruments Act provides as under:

(a) An instrument in writing.

(b) An unconditional undertaking, signed by the maker, to pay a certain sum of money only.

(c) Money is payable to the person in whose favour the promissory note is executed or to the order of a certain person or to the bearer of the instrument. It should be signed by the maker.

From the perusal of aforesaid document, it is apparent that except the money was payable to the order of or the bearer of instrument,

other conditions were incorporated in the document.

(I) If money payable under the instrument is not certain, it cannot be a promissory note, although it can be a bond.

(ii) If the instrument is not attested by a witness, it cannot be a bond, although it may be a promissory note.

(iii) If the instrument is payable to order or bearer, it cannot be a bond, but it can be a promissory note”.

8. In the present case, money payable under the instrument is certain, therefore, the trial court is right in holding that the documents produced before the said court are promissory notes. From the evidence of Hitesh Bhai Patel, it is clearly established that the appellant borrowed a sum of Rs.1,00,000/- and four promissory notes were executed in his favour and has delivered amount on the date of execution of promissory notes on 30-5-1999. Version of this witness is supported by four promissory notes, therefore, bald statement of the appellant side against the document is not acceptable. The trial court is right in holding that the appellant borrowed a sum of Rs.1,00,000/-. The trial Court awarded interest @ 6% per annum which cannot be termed on higher side.

9. The appeal is liable to be dismissed as argument advanced on behalf of the appellants is not sustainable. Case laws cited by

learned counsel for the appellant do not help to him as the same are clearly distinguishable from the facts of the present case.

10. Accordingly, the decree is passed in favour of the respondent and against the appellant as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellant to bear the cost of the respondent through out.
- (iii) Pleader's fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju